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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of \$
Streamlining the Commission's Antenna \$
Structure Clearance Procedure \$
and \$
Revision of Part 17 of the Commission's \$
Rules Concerning Construction, Marking, \$
and Lighting of Antenna Structures \$

WT Docket No. 95-5

COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Southwestern Bell Mobile Systems, Inc. (SBMS) files the following comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking¹ in this proceeding. SBMS supports the Commission's efforts to streamline the antenna structure clearance process by replacing the current procedures which apply to licensees and permittees with a uniform registration process for structure owners. SBMS submits the following comments regarding specific portions of the Commission's proposal.

I. ANTENNA STRUCTURE REGISTRATION

The Commission proposes a uniform procedure for registering antenna structures and a common database containing structure information. The procedure would be used for registering each antenna structure requiring notice of proposed construction to

¹In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, WT Docket No. 95-5, Notice of Proposed Rulemaking (Released January 20, 1995). ("NPRM").

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the Federal Aviation Administration (FAA).² The structure owner would be primarily responsible for: 1) registering the antenna structure with the FCC; 2) maintaining the painting and lighting of the antenna structure in accordance with the Commission's rules; 3) notifying the Commission of any changes in height, coordinates, ownership, painting or lighting of the structure; and 4) notifying the Commission of dismantling of the structure.³ The antenna structure owner would obtain a Registration Number for the structure, and would provide a copy of the registration, FCC Form 854R, to all prospective and existing tenant licensees. The licensee or permittee would then file a copy of the registration with its station records and would include the Registration number on applications for new, modified or renewed authorizations.

The proposed procedures will help achieve the Commission's stated purpose of improving the speed of disposal of certain Commission authorizations while reducing the burdens on the industry.⁴ The proposed procedures will also improve the efficiency of the Commission by eliminating the need to process duplicate information--now it will receive the majority of the information once--from the structure owner, not each licensee on the structure. The Commission and the industry will also benefit from the establishment of a common database using the uniform information received through the registration process. The use of

²NPRM, para. 7.

³Id.

⁴NPRM, para. 4.

multiple databases has proven to be cumbersome and time consuming. Placing all relevant information in one data base will allow both the Commission and the industry to work more efficiently. Thus, SBMS supports the Commission's proposals to streamline the registration process.

A. The Commission Should Implement the Registration Process on a Geographical Basis.

The NPRM proposes three options for the implementation of the new registration process: 1) geographical implementation, 2) implementation by antenna structure height, or 3) implementation upon renewal. The Commission should adopt the geographical implementation option.

Pursuant to the geographical implementation option, the United States would be divided into regions, with filing windows set for each region.⁵ SBMS submits that the registration could be implemented easily using the geographic regions already established by the FAA. SBMS agrees that the Commission should allow structure owners to submit simultaneous unified filings for commonly owned structures prior to the filing windows, where doing so will unify the filings for that owner or group of owners.⁶ SBMS also believes that staggered 3 month filing windows would be appropriate.

The Commission should not adopt the implementation by tower height option because of the large number of structures which would fall into certain common height categories, thus causing a

⁵NPRM, para. 11(a).

⁶Id.

backlog in registration. The Commission should not adopt the implementation on renewal option because of the delays it will cause. The NPRM acknowledges that the implementation upon renewal option would spread full implementation out over a ten year period. The Commission and the industry should not be required to wait 10 years to receive the full benefit of the proposals outlined in the NPRM. The geographical implementation option will result in the Commission's proposals being implemented in a timely yet uniform manner and should be adopted.

B. FCC Registration Should Not be Required Prior to Construction--Notification is Sufficient.

The NPRM proposes that "all new antenna structures would have to be registered prior to construction".⁷ The proposed rules state in pertinent part that:

For applications involving construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, the antenna structure owner must obtain a **Federal Aviation Administration (FAA) determination of "no hazard" and a FCC Antenna Structure Registration Number for each such antenna structure before construction or alteration of the antenna structure may begin.**⁸

The antenna structure owner should not be required to delay construction until the FCC registration has been processed and a structure number assigned. Waiting for the assignment of the FCC Antenna Structure Registration Number delays construction for no apparent reason. From a safety standpoint it is the FAA

⁷NPRM, para. 13.

⁸NPRM, p. 32 (22.143 & 22.163). (emphasis added).

determination of "no hazard" that is important. If the structure owner has obtained a FAA determination of "no hazard" it should be allowed to begin construction upon filing of FCC Form 854 requesting a Registration Number. Construction should not have to be delayed until the Form 854 is processed and a Registration Number assigned.

C. Responses to Specific Questions.

SBMS supplies the following comments in response to the Commission's request for input on several specific questions regarding the new procedures:

1. Should owners who voluntarily light their structures be required to register the structure.

Structure owners who voluntarily light their structures should be required to register such structures. Requiring registration will assure that all lighted structures in an area are identified, thus diminishing the confusion and potential danger that would occur if a voluntary lighted structure is mistaken for a structure which is required to be lighted for aviation safety.

2. Who will require access to the database and what types of information and access should be required.

A wide range of individuals and entities will require access to the common database, including licensees and potential licensees. SBMS suggests that online access be offered. Licensees will require current up-to-date information thus making on-line access essential. SBMS also suggests that the database be available on CD-ROM for those who would prefer such a format over on-line access. Reliance on quarterly hard copies only would be

cumbersome, costly and would not provide the most up-to-date information.

3. Should electronic filing be allowed?

SBMS supports the use of electronic filing as an easy cost effective means of transmitting the information. The advantage of electronic filing is that it enables the Commission to process the information without having to manually key the information into the database. The Commission however should not make electronic filing mandatory because not all licensees may have the ability to file electronically. Thus, SBMS suggests that electronic filing be optional.

4. Should a periodic renewal period be adopted?

A mandatory renewal period for structure owners is not required to protect the integrity of the common database. Rather, what is critical to the integrity of the database is that changes in structures, owners, licensees on the structure and other relevant factors are included in the database. If a periodic renewal period is adopted it should be every ten years, which would coincide with most license renewal periods.

5. Should a registration fee be imposed?

SBMS is not in favor of a separate registration fee which would apparently be in addition to the regulatory fees already imposed by the FCC. A more equitable solution would be to charge for access to the database thus placing the cost of the database on those who benefit from its use. At the very least, an access charge should be imposed to help offset the cost of the database--

the registrants should not be forced to pay the entire cost of the database, rather the users of the database should pay a portion of such costs.

6. Registration of all structures and/or high powered stations.

SBMS does not favor the expansion of the common database to include all structures and/or high powered stations. The Commission and the industry are taking on a sizable task in implementing the common database for those structures requiring notice of proposed construction to the FAA. To expand the NPRM and the database beyond this effort will only delay the implementation of the common database by increasing the cost, number of structures to be registered and work associated with implementing the procedures and the database. The Commission should confine its initial efforts to implementing the streamlined process and common database for those structures requiring notification to the FAA.

7. Notice of Obligations to Structure Owners.

The Communications Act requires that antenna structure owners be given notice of their obligations under Section 303(q) of the Communications Act prior to a forfeiture being imposed. Publication in the Federal Register should be adequate notice to inform antenna structure owners of their obligations. Interpreting "notice" as Receipt of an Antenna Structure Registration or a letter from the FCC excuses the owner from an obligation to know the law.

8. Accuracy of location and height information.

SBMS supports the Commission's proposal to require height information to the nearest meter as a stated standard. SBMS believes that the proposed adoption of a location standard of to the nearest second will necessitate the employment of a device such as a Global Positioning System (GPS) or other survey device providing such accuracy. The 7.5 topographic maps are simply not accurate enough to provide location information to the nearest second with any consistent accuracy. Thus SBMS supports the use of GPS or other survey devices to establish the location to the nearest second. SBMS also supports the same standards being applicable for all antenna structures. There is no rational reason why distinctions should be drawn based on the type of radio service using the structure.

II. CHANGES TO SPECIFIC RULES

A. 17.45

Proposed Rule 17.45 would require antenna structure owners to receive a Antenna Structure Registration Number prior to the start of construction and to notify the Commission within 24 hours of construction and/or dismantlement.⁹ As noted above, owners should be allowed to start construction upon FAA determination of "no hazard" and the filing of FCC Form 854 (Application for Antenna Structure Registration). In addition, the filing of notice of completion of construction is unnecessary and contrary to the Commission's objective of eliminating needless

⁹NPRM, p. 27.

burdens on the Commission and industry. Rather, the Commission should assume that the construction will be completed and should only require notification of an abandonment of the construction or the dismantling of the structure. If the Commission is concerned that the integrity of its database may be compromised, a time limit for notification of abandonment of construction could be established--i.e. if construction is not started within a set amount of time, the owner would be required to file notice of abandonment.

B. 21.15(d)

Proposed Rule 21.15(d) states that before construction of a new structure or alteration in height, a FAA "determination of "no hazard" ~~may~~ be required".¹⁰ Proposed Rule 17.5(a) however states that "each owner of a proposed structure ~~must~~ submit a copy of the FAA determination of "no hazard". A copy of a determination of "no hazard" is not required if FAA notification is not required under 17.7 of this chapter."¹¹ The Commission should indicate in Section 21.15(d) that a determination of "no hazard" is mandatory unless FAA notification is not required under 17.7.

CONCLUSION

For the reasons stated herein SBMS supports the Commissions efforts to streamline the antenna structure clearance procedures and to establish a common database for antenna structure

¹⁰NPRM, p. 28. (emphasis added).

¹¹NPRM, p. 22. (emphasis added).

information and urges the Commission to include in its efforts the modifications described in these Comments.

Respectfully submitted,

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